

Meeting of 2011-8-9 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
AUGUST 9, 2011 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Councilmember Haywood called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law.

ADDENDUM TO AGENDA:

1. Conduct election of acting Mayor Pro Tem.

MOVED by Shoemate SECOND by Bellino-Hall to election Doug Wells as acting Mayor Pro Tem. AYE: Shoemate, Tennis, Bellino-Hall, Givens, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

The council recessed at 6:00 p.m. and reconvened at 6:04 p.m.

Acting Mayor Pro Tem Doug Wells Also Present:
Presiding Larry Mitchell, City Manager
 Frank V. Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Paul Hossenlopp, Fort Sill Liaison

ROLL CALL

PRESENT: Bill Shoemate, Ward One
Michael Tennis, Ward Two
Rosemary Bellino-Hall, Ward Three
Rex Givens, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
 Doug Wells, Ward Eight

ABSENT: Jay Burk, Ward Four

Invocation was given by Pastor Steve Shaw, Crystal Hills Free Will Baptist Church, followed by the Pledge of Allegiance.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETINGS OF JUNE 14 AND JULY 26, 2011.

MOVED by Tennis SECOND by Shoemate to approve the minutes of Lawton City Council regular meetings of June 14 and July 26, 2011. AYE: Wells, Shoemate, Tennis, Bellino-Hall, Givens, Zarle, Haywood. NAY: None. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Bellino-Hall requested item #13 and Wells requested item #7 be considered separately.

MOVED by Shoemate SECOND by Tennis to approve the consent agenda with the exception of items #7 and #13. AYE: Shoemate, Tennis, Bellino-Hall, Givens, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Donald and Chom Nam Rumsey in the amount of \$3,938.24 (**Res. 11-67**) and Thelmer and Eugenia Hutcheson in the amount of \$1,112.11 (**Res. 11-68**). Exhibits: Legal Opinions/Recommendations, Resolution No. 11-____ and Resolution No. 11-____.
2. Consider adopting a resolution ratifying the actions of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of Dwight Franklin in the Workers' Compensation Court, Case No.

3. Consider approving contract with Journey Productions for technical support services for the 2011 International Festival for September 19-27, 2011. Exhibits: Contract on file in City Clerk s office.
4. Consider approving contracts with Chris Wiser (Sugar Free Allstars), David Gish of Tract & Friends and Teresa Black performers at the 2011 International Festival and authorize the Mayor and City Clerk to execute the agreements. Exhibits: Contracts on file in City Clerk s office.
5. Consider approving a restricted access contract at Elmer Thomas Park with Lawton Patriots Lions Club for the purpose of holding a sanctioned 5K Road Race for the visually impaired in the park on October 29, 2011 and authorize the execution of such a contract for the given purpose. Exhibits: Restricted Access Contract with Lawton Patriots Lions Club on file in City Clerk s office.
6. Consider approving a credit adjustment in the amount of \$1,071.16 to Christian Properties service account #00005077 for the property at 1210 NW Goodyear Boulevard for an undetected, underground leak on the customer s water service line. Exhibits: Invoice from Towers Plumbing dated 03/25/2011.
7. Consider issuing a revocable permit to Lakecrest Development, LLC, for the construction of patios on utility easements on Lots 1 - 10, Block 2, and Lots 1 7, Block 4, The Meadows. Exhibits: Application and site plan. Revocable Permit on file in City Clerk s Office.

Wells questioned if anything was built in those easements.

Richard Rogalski, Planning Director, stated there are no utilities under the patios. There are utilities in the easement. He stated it is possible that some day those patios would have to be dug up. He stated when they originally developed this property they did not show the patios so there was nothing inside the utility easements and now they want to put patios there. The patios will not be able to be covered so there will just be a concrete slab that would be put there.

Wells questioned how we could be assured that in the future people are not going to cover their patios.

Rogalski stated by code they would have to pull a building permit and we would not issue that permit because we would know it was in the easement. He stated the revocable permit is what allows us to be protected.

Wells questioned how the people who buy the property in the future would know there is a revocable permit.

Rogalski stated the plat will show the easement.

Mitchell stated part of the closing would involve a survey which would show the encroachment of the patio.

Wells stated they just keep making exceptions which allow people to build on top of our easements.

Bellino-Hall stated that she agrees they need to be more stringent on this issue.

MOVED by Wells SECOND by Tennis to deny the revocable permit. AYE: Tennis, Bellino-Hall, Zarle, Haywood, Wells, Shoemate. NAY: Givens. MOTION CARRIED.

8. Consider setting a date of September 13, 2011, to hold a public hearing and consider a request to close a 10-foot utility easement on Lot 10, Block 1, Silver Creek Patio Homes Addition, also known as 6920 NW Maple Drive. Exhibits: Location Map and Application.
9. Consider accepting the sewerline located at 1420 SE Tower Road to serve Buffalo Bob s RV Park, maintenance bond, and utility easement. Exhibits: Location Map. Maintenance Bond and Easement on file in City Clerk s Office.
10. Consider approving Amendment No. 2 with Black & Veatch Corporation reducing the contract amount for design of the WWTP Improvement Project #2008-11. Exhibits: Amendment No. 2 is on file in the City Clerk s Office.
11. Consider rejecting bid proposals for the Street Division Building Removal/Re-construction Project #2011-3. Exhibits: None.
12. Consider accepting a permanent easement and a temporary easement from David A. Nottingham & Judy Nottingham for right of way needed for the NW 82nd Street Sewer Line Project #2010-4, authorizing the Mayor and

City Clerk to execute the documents and authorizing payment for the same. Exhibits: Documents are on file in the City Clerk's office.

13. Consider approving a resolution increasing the petty cash amount for the Animal Welfare Division from \$50.00 to \$1000.00. Exhibits: Resolution No. 11-__.

Bellino-Hall stated she is concerned that there will be \$1,000 in cash lying in the drawer. With the recent audit there are multiple short term corrective actions that needed to take place and she is very uncomfortable allowing them to have that amount of money without first showing her that all of this has been corrected over a period of time.

Jerry Ihler, Public Works Director, stated this action is a result of the audit. One of the processes that they deal with is that they receive deposits for sterilization, rabies vaccinations and trap deposits. Currently they deposit the money and when they return the deposit they go through the PO process which takes approximately three weeks to a month before the citizen would receive their deposit back. After meeting with the Finance Director and the City Auditor, they felt that this was not acceptable. He stated they are following the recommendations of the audit and they have taken care of the majority of those deficiencies that were identified in the audit.

Bellino-Hall stated with the way it is being done now, they will have a paper trail. She feels that \$1,000 in petty cash will lead to future problems and that concerns her.

Ihler stated there are other entities within the city that have similar petty cash amounts. At the end of the day a reconciliation is done by two individuals and they document what they have and they send the deposit in. In the morning a different individual counts it and documents it. When people bring in deposits they have a three piece receipt, one goes to the individual, one is kept at the shelter and the third goes with the deposit.

MOVED by Shoemate SECOND by Haywood to approve **Resolution No. 11-70** increasing the petty cash amount for the Animal Welfare Division from \$50.00 to \$1000.00. AYE: Givens, Haywood, Shoemate. NAY: Bellino-Hall, Zarle, Wells, Tenis. MOTION FAILED.

14. Consider extending contract (RFPCL10-049) Banking Services to IBC Bank of Lawton, OK. Exhibits: Department Recommendation, Contract Extension Form.

15. Consider extending contract (CL10-002) Sodium Hypochlorite to Petra Chemical Company of Dallas, TX. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

16. Consider extending contract (CL11-002) Nuisance Abatement-West Side to The Lawn Wizards of Lawton, OK. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

17. Consider approving appointments to boards and commissions. Exhibits: None.

Lakes and Land Commission

Dr. Richard Campbell Dr. Mark Duncan
1002 SW 52nd Street 8202 NW Stonebridge Court
Lawton, Oklahoma 73505 Lawton, Oklahoma 73505
08/09/2014 08/09/2014

Mayor s Commission On The Status Of Women

Rebecca McKeowan
Ward 1
3122 NW Denver
Lawton, Oklahoma 73501
Unexpired Term 10/11/11

Pension Trust Commission

Robert W. Kindt
2302 NW Ivanhoe Place
Lawton Oklahoma 73505
09/10/16

18. Consider approval of payroll for the periods of July 25 August 7, 2011.

NEW BUSINESS ITEMS:

19. Consider accepting the annual audit report of the City of Lawton for the year ending June 30, 2010. Exhibits: None.

Wells suggested they table this item until the next meeting so that they can review this report.

MOVED by Wells SECOND by Zarle to table.

Mitchell stated this is an independent audit report. The action taken by the council tonight is just to accept the audit. The council does approve or reject it and they cannot change it.

Rick Endicott, Finance Director, stated if the council will at least let the auditors talk about the report it might clarify any questions the council may have. He stated the two auditors have come to Lawton from Oklahoma City and Edmond and are ready to present the report.

Wells withdrew his motion.

Ladonna Sinning, Arledge & Associates, stated a single audit is required if you spend more than \$500,000 in federal money in a year and Lawton will always get one. She stated with regards to the annual financial statements and the independent auditors report, the audit opinion is unqualified, also known as a clean opinion.

She stated there is one item in the document she would like to point out, which is the City's unfunded pension liability for the City's employee retirement system. The plan assets are only about 63% of the liability which is down over the past five years. It was over 80% and now we are down towards 60%. The economy has impacted this issue, but the funding level is low enough it should have the council's attention. When a single audit is done over the federal grant monies, they have to select major programs which are generally done by auditing the largest programs and/or the highest risk programs. Those programs are listed. The only opinions in the single audit reports are over compliance with laws and regulations within those grants. That opinion is also unqualified and a clean opinion. She stated they do have some findings. Findings are either classified as either a significant deficiency or a material weakness. With regards to the CDBG Section 108 program, it had to do with obtaining weekly certified payrolls from the contractor and not getting that done consistently. She stated when they discussed this with management they were well aware of the requirement and it was an oversight issue where it did not get done consistently. She stated there is also one finding where there is one remaining issue to fix where the back up person for one approver is also an approver herself, and sometimes she will approve twice on behalf of herself and on behalf of someone that is out. They have recommended that they move to a different back up approver. She stated with the 2010 audit they are presenting a full three months ahead of where they were with the 2009 audit. It is still a material weakness, but she does not feel the finance department can turn that wheel much faster to try to get it out earlier. She stated there were several things from the 2009 audit that they were able to clear away. She stated there is considerable improvement and progress is being made.

Brenda Wright, Crawford & Associates, stated the performeter is a combination of financial ratios that they have put together and come up with a financial score based on the financial statement audit for 2010. She stated the performeter rating is a 6.7 which is up from a 6.4 the previous year. The main reason is a slight increase in sales tax. She stated some of the operations such as water, sewer, sanitation, etc. were more able to help cover their own cost this year than they were in the past. She suggested they go to the annual financial report and starting on page 8 read the MD&A, which breaks the report down into a summary. This will give a good picture of how the city is doing overall.

Wells stated we have approximately \$119 million in indebtedness and we are due to pay off \$70-\$80 million in the next year or so. He questioned if that would affect the performeter.

Ms. Wright stated yes. If we paid off a large portion of the debt and you don't incur any more debt, that will improve your financial condition.

Mitchell stated a large portion of that debt is the CIP program. He stated they are now discussing the 2012 CIP.

Givens stated the council recently addressed the pension issue.

Mitchell stated the pension questioned will be partially resolved in next year's audit. Early in fiscal year 2010-2011 they made some significant changes in the pension program that will address the funding issue and improvements will be made over time.

Wells stated up to about five years ago we used to buy treasuries and get 6-10% interest and now we are getting 1%, and that has affected that fund greatly. He stated the trust has also allowed a certain amount to go into the stock market and due to the downturn they have lost several million dollars.

Ms. Wright stated that eventually the economy will come back up and offset some of those negative losses. A lot of pension plans have the same issues.

MOVED by Givens SECOND by Haywood to accept the annual audit report of the City of Lawton for the year ending June

30, 2010. AYE: Givens, Zarle, Haywood, Wells, Shoemate, Tennis, Bellino-Hall. NAY: None. MOTION CARRIED.

20. Consider approving an ordinance creating Sections 10-17-1701 through 10-17-1709, Article 10-17, Chapter 10, Lawton City Code, 2005, to assess and levy the continuation of a one and one-quarter percent (1.25%) sales tax to be collected from January 1, 2012, through December 31, 2018, for the purpose of financing capital improvement projects of the City, providing for the administration of the collection of the sales tax, severability, continuation of the ordinance in the event the purpose of revenue provision is declared invalid, codification and requiring the full text be published and take action as necessary. Exhibits: Ordinance No. 11-____.

MOVED by Shoemate, SECOND by Tennis to adopt **Ordinance 11-35**, waive the reading of the ordinance, read the title only. AYE: Zarle, Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Givens. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-35

An ordinance pertaining to finance and taxation creating sections 10-17-1701 through 10-17-1709, article 10-17, chapter 10, Lawton city code, 2010, by enacting an ordinance assessing and levying an excise tax of one and one quarter percent (1.25%) in addition to all other excise taxes assessed and levied by the city of Lawton, Oklahoma, and all other taxing authorities, upon the gross proceeds or gross receipts derived from all sales to any person taxable under the Oklahoma sales tax code, codified in title 68, Oklahoma statutes, section 1350 et seq, providing for the administration and collection of said tax; providing for the use of state permits in lieu of permits issued by the city; stating the purpose of the revenues derived from said sales tax and providing for the disposition of proceeds Therefrom; declaring that revenues be used for the financing of capital improvement projects for the city; providing that the tax shall be limited to a period commencing January 1, 2012, through December 31, 2018; making the tax cumulative; providing that the governing body may make administrative and technical changes which do not affect the tax rate; requiring approval of this ordinance by majority of the registered, qualified voters of the city voting at an election to be held for such purpose as provided by law; providing for codification; providing for severability of the provisions of this ordinance; providing for continuation of this ordinance in the event the purpose of revenue provision is declared invalid; providing for an effective date; and requiring the full text to be published.

21. Consider approving an ordinance authorizing the calling and holding of an election on October 11, 2011, in the City of Lawton, State of Oklahoma, for the purpose of submitting to the registered qualified electors of said City the questions of the continuation of a one and one-quarter percent (1.25%) sales tax for seven years and the issuance of the bonds of said City in the sum of Twenty Million Dollars (\$20,000,000) upon all the taxable property in said City for the payment of the interest and principal on said bonds, to provide funds for the purpose of various capital improvements to the City of Lawton; providing for severability; declaring an emergency; and requiring the full text be published and take action as necessary. Exhibits: Ordinance No. 11-____ and Election Proclamation.

Entire ordinance was read by the City Clerk.

MOVED by Givens, SECOND by Shoemate to adopt **Ordinance 11-36**. AYE: Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Givens, Zarle. NAY: None. MOTION CARRIED

23. Consider appointing any interested council members to a work group being set up for the purpose of drafting an ordinance to reconstitute the employee advisory committee. Exhibits: None.

MOVED by Shoemate, SECOND by Haywood to appoint Council members Givens, Haywood and Wells to a work group for the purpose of drafting an ordinance to reconstitute the employee advisory committee. AYE: Wells, Shoemate, Tennis, Bellino-Hall, Givens, Zarle, Haywood. NAY: None. MOTION CARRIED

24. Consider an Ordinance amending Sections 5-1-101, 5-1-113, 5-3-301, 5-3-302, 5-3-303, 5-5-501, and 5-5-502, Chapter 5, Lawton City Code, 2005, pertaining to licensing and quarantining of animals, providing for severability, and establishing an effective date. Exhibits: Ordinance 11-____.

Ihler stated the proposed ordinance deals with specifically two changes to the city code. The first change would allow owners and veterinarians the option to choose between a one year

rabies vaccine and other approved rabies vaccines that extend beyond the one year term when administered at a proper time interval as recommended by the vaccine manufacturer. That item was requested through a letter sent by Dr. Hergenrether who also contacted council member Wells who asked that this issue be brought before the council. He stated staff did research other communities such Oklahoma City, Tulsa, Edmond, Norman and those communities do have a similar ordinance. Staff also contacted local veterinarians and received a mix review. Several they talked to were opposed to the ordinance change. The feedback they received was that if they accept a three year vaccine, then the pet owners would only bring the animals in every three years to see the veterinarian and that might cause health concerns. He stated the second ordinance change incorporates changes made to the

Oklahoma State Department of Health rabies prevention codes relating to home quarantine. The amendment would allow owners of dogs, cats or ferret, that have not inflicted a severe bite and are current on their rabies vaccination to be quarantined at the owner s home under the guidelines of the state health department. He stated there are several veterinarians in attendance that would like to speak about the vaccination issue.

Wells stated he got a request from Dr. Hergenrether to bring this issue to the council. He stated all of the major cities in Oklahoma, except for Lawton, have gone to the three year vaccination. He stated he feels animal welfare staff has come up with an ideal solution whereby the veterinarian can decide if they want to issue a one year or three year vaccination certificate.

Dr. Brannon Jackson, 6731 Cache Road, stated they send out one year reminders for the rabies vaccines and he finds that his clients come in anywhere from one to six months late. He is concerned that if they went to a three year vaccine there would be a gap. He stated he is also concerned that Lawton is a military community and if reminders are sent out every three years that many of those notices will not get to the right address.

Givens stated that all of the major cities in Oklahoma are doing it this way, he questioned if they were all wrong.

Dr. Jackson stated in his opinion he feels it is a bad idea.

Wells stated he understands that the one year and the three year vaccination are the same vaccination.

Dr. Jackson stated that is correct. They currently use the three year vaccination every year.

Wells stated he has heard complaints that the dogs would be overmedicated.

Dr. Jackson stated he is not aware of any studies that show there is any significant health issues with over vaccination.

Zarle stated he was told that you have to have two annual shots in a row before you can go to the three year.

Dr. Jackson stated that is correct. The first rabies vaccine is only good for a year.

Dr. Justin Graham, 4105 W. Gore, stated he disagrees with the three year rabies vaccine. He stated there are other states that actually require more frequent rabies vaccinations. He stated there has never been any research that shows that you are over vaccinating or that you are causing significant problems. He stated he gives his dog a three year rabies vaccination every year. He stated rabies is not only fatal to animals but also to humans. He disagrees with the three year vaccine because when he came to Lawton the certification rules where changed and before that change there were a tremendous number of animals that were not being vaccinated annually. He stated if this is changed to a three year vaccine it will send a mixed message to Lawton residents and a lot of confusion. He feels the one year vaccine is safer. He stated Lawton does not have a veterinary medical association and he feels that is a shame.

Wells questioned if Meadow Wood Hospital gives one or three year vaccines.

Dr. Graham stated they give yearly shots with three year vaccines to dogs and one year vaccines to cats.

Wells stated if this ordinance is passed it will not mandate the use of the three year vaccine. Veterinarians will still have a choice.

Zarle questioned if they could live with having the choice.

Dr. Graham stated he feels it would be affecting the public in the wrong way. He stated responsible people are going to take care of their animals, but the law here is for the people who don t. There are many people who don t do what the law requires of them and those numbers are going to go up and rabies quarantines going to go up. They are going to have the same problems they were trying to fix four years ago. Personally he can live with the option.

Dr. Chambers, 1704 SE 60th, stated he feels if you go to a three year rabies program you are looking at lowering the awareness of rabies. He stated the vaccines are not 100% efficient. If you want to protect the animal from rabies he suggests you give it a shot every year. He stated the three year vaccine works great under the federal government guidelines in a perfectly healthy animal. He stated if his neighbor had a biting dog he would want to make sure he had a rabies shot each and every year. He stated he vaccinates at least 100 horses a year for rabies and in a horse it only lasts one year. Due to the environmental conditions he is seeing an influx of wild animals. If they do not advocate rabies awareness, he sees us bringing rabies into our surroundings. He is not in favor of putting the public at risk.

Dr. John Hergenrether, 6229 NW Gore, stated he proposed this idea. Rabies is 100% fatal once they start showing

clinical signs of the disease and it is a preventable disease. The proper application of any vaccine has prolonged the life span of their patients. There are two approved rabies vaccinations, a one year and a three year rabies vaccination. Many manufacturers make two separate vaccines. Both require a vaccine by four months of age and a booster one year later. The difference between the two vaccines lies in their approval that was granted by the USDA. Due to the individual reactions and adverse reactions, there is no single specific recommendation for any vaccination that exists for all veterinary patients. It falls to the veterinarian to determine the best patient care and vaccination program. They must determine the risk factors for acquiring the disease and the potential for adverse reaction caused in the patient by the vaccination. Many cities in Oklahoma do recognize both the one year and three year rabies vaccine. Comanche County does not have any increased risk of rabies in our domesticated animals as compared to any other Oklahoma county. This ordinance applies to dogs and cats. They represent less than 10% of the cases of rabies reported in Oklahoma. It is his position that the veterinarian with the veterinarian/client relationship is in the most advised position to make the individual vaccination recommendation for their patients. He stated there are studies that do recognize the adverse effects of vaccinations. He is requesting the change in city code to better allow the individual veterinarian to determine the vaccination needs and risks of their individual patients.

Givens questioned how many of Dr. Hergenrether's patients had an adverse effect in the past year.

Dr. Hergenrether stated that they have at least one documented case of a neurologic episode that happened secondary to the vaccination. It had nothing to do with the type of vaccination but it may have something to do with the frequency of the vaccination. His argument today is that this should not be an economic motivator for veterinarians, it should be based on the recommendation for that individual patient's health requirement.

Wells stated he has had emails from citizens who would like to see the three year vaccines included. He feels the appropriate course of action would be to leave it up to the veterinarian.

Haywood questioned staff recommendation.

Ihler stated it does not affect the operation of the facility and the staff. He would defer to the professional veterinarians as to what they believe is best for the community. The feedback they have received is that it is better to require a vaccination every year.

Scott Meadors, Deputy City Attorney, stated this ordinance does not say that you have to give a one year or three year vaccination, that discretion is still up to the veterinarian. Where the City controls this process is at the licensing stage when someone comes in for their annual license. Right now vaccination is defined as every twelve months. If this ordinance is approved there is a recommended change in section 5-5-501, paragraph A2, second paragraph. They changes should read: The B: license will be valid for one (1) year or the term of the animal's rabies vaccination certificate if less than one year, at which time the owner or keeper must renew the B license and provide proof of current rabies vaccination for the one (1) year renewal term and upon payment of renewal fees as specified in the fee schedule.

Wells stated he does not see any reason why Lawton would be any different than any other city in Oklahoma.

Zarle stated Wichita Falls has had problems with rabies and he would like his animals to be checked every year. It is a good time for a veterinarian to look them over.

Wells stated under this ordinance, everyone still has that option. It is a good option to let the veterinarians decide.

MOVED by Wells, SECOND by Tennis to adopt **Ordinance 11-37**, as amended, waive the reading of the ordinance, read the title only and establishing an effective date.

SUBSTITUTE MOTION by Zarle, SECOND by Haywood to require the rabies vaccine every year. AYE: Givens, Zarle, Haywood. NAY: Tennis, Bellino-Hall, Wells, Shoemate. MOTION FAILED

(Title read by City Attorney)

Ordinance 11-37

An ordinance amending sections 5-1-101, 5-1-113, 5-3-301, 5-3-302, 5-3-303, 5-5-501, and 5-5-502, Chapter 5, Lawton City Code, 2005, pertaining to licensing and quarantining of animals, providing for severability and establishing an effective date.

VOTE ON ORIGINAL MOTION: AYE: Shoemate, Tennis, Bellino-Hall, Haywood, Wells.

NAY: Givens, Zarle. MOTION CARRIED

22. Consider taking action to provide water from Lake Ellsworth to East Cache Creek below the dam to flush stagnant water for ranchers downstream. Exhibits: Minutes from the City Council meeting of September 12, 2000 and Minutes from the City Council meeting of September 12, 2006.

Ihler stated he received a phone call last week from two individuals, one a rancher downstream from Lake Ellsworth and the other from Mr. Cofer from U.S. Fish and Wildlife. Due to the drought, East Cache Creek is drying up and the water remaining in the creek is stagnate and this could cause problems with the cattle drinking this water. The request is to release water from Lake Ellsworth in an amount to flush East Cache Creek and get rid of the stagnate water. In 2000 the council approved a request to release 400,000 gallons per day for a period of five days. In 2006 the council approved the release of 600,000 650,000 gallons per day for a period of two days.

Ihler presented slides depicting elevation levels of Lawtonka and Ellsworth. He stated they typically lose about 50 million gallons a day out of Lake Ellsworth from evaporation. The request equals approximately 1% of what we lose to evaporation.

Givens questioned if the request of 400,000 gallons was total or per day.

Ihler stated it is per day over a five day period. The total would be 2 million gallons. He stated they will go to mandatory restrictions once the elevation of Lake Lawtonka drops to 1334, so it will need to come down another 4.67 feet before the mandatory restriction will be implemented. He stated we are in really good shape considering the drought that we are experiencing. He stated the question tonight is if the council would like to release water from Lake Ellsworth. There is a two inch valve on the Waurika pipeline that comes into the bottom of the east side of the dam and that would be opened for a few days. He suggested that if they choose to do this they monitor the flow and shut it off when they get a good flush.

Shoemate stated he would hate to see us just release the water when our residents pay pumping fees and we may go to restrictions.

Tenis stated the citizens of Lawton have to pay for their pumping fees and he cannot vote for this request.

Ihler stated there are three options. You could release the water, charge the pumping fee that we have from Lake Ellsworth or we could charge the raw water fee which is \$1.03 per 1,000 gallons. If we were to release 500,000 a day that would be \$515 per day.

Tenis stated the citizens should not be paying for something that someone else gets for free.

Ihler stated part of the difficulty would be determining who we would charge downstream. There are multiple property owners. Some don't even own cattle. You could charge those individuals that are making the request.

Jensen stated they would charge those making the request and they could get compensation from those who want to share.

Bellino-Hall questioned if we could sustain the loss of 2 million gallons or would that create a problem for us.

Ihler stated we are currently treating 30-32 million gallons a day from both plants and we lose 50 million gallons a day due to evaporation from Ellsworth and another 25 million from Lawtonka. He stated that 2 million gallons is about 1 % of what we lose to evaporation every day.

Bellino-Hall stated it doesn't seem like we are really hurting ourselves if we release the 2 million gallons. It sounds like a drop in the bucket.

MOVED by Tenis, SECOND by Wells to deny the request. AYE: Wells, Tenis. NAY: Bellino-Hall, Givens, Zarle, Haywood, Shoemate. MOTION FAILED.

Zarle questioned if Ihler felt they could force enough water out in one day to clean it out.

Ihler stated in 2006 they used a 2 valve and that is a slower rate. If they open one of the water storage gates it would be at a much faster rate. It would be more difficult to measure how much is going through by opening and closing the gate.

MOVED by Shoemate, SECOND by Tenis to approve the request and direct staff to charge the raw water rate of \$1.03 per 1,000 gallons. AYE: Givens, Wells, Shoemate, Tenis, Bellino-Hall. NAY: Zarle, Haywood. MOTION CARRIED

25. Consider approving an Ordinance pertaining to Food and Food Establishments amending Section 12-1-115, Article 12-1, Chapter 12, Lawton City Code, 2005, by adding a late fee on the renewal of expired permits and by clarifying the requirement of possessing a state permit, providing for severability, and establishing an effective

date; and consider approving a Resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2005, adding a late fee for expired business licenses. Exhibits: Ordinance No. 11-____ and Resolution No. 11-____.

(STRICKEN FROM AGENDA)

26. Consider an ordinance pertaining to glass tubes creating Section 16-5-1-504.1, Division 16-5-1, Article 16-5, Chapter 16, Lawton City Code, 2005, making it unlawful for a retailer to offer for retail sale to any patron a glass tube, providing for codification, severability, and providing for an effective date. Exhibits: Ordinance No. 11-____.

Meadors stated on November 1, 2010 the state legislature made it unlawful for retailers to offer for sale a glass tube. There is an exception for proper medicinal uses. This ordinance updates city code to be consistent with state law.

MOVED by Givens, SECOND by Haywood to adopt **Ordinance 11-38**, waive the reading of the ordinance, read the title only and providing for an effective date. AYE: Givens, Haywood, Wells, Shoemate, Tennis, Bellino-Hall. NAY: None. ABSENT: Zarle. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-38

An ordinance pertaining to glass tubes creating Section 16-5-1-504.1, Division 16-5-1, Article 16-5, Chapter 16, Lawton City Code, 2005, making it unlawful for a retailer to offer for retail sale to any patron a glass tube, providing for codification, severability, and providing for an effective date.

27. Consider an ordinance creating Section 23-5-548, Article 23-5, Chapter 23, Lawton City Code, 2005, pertaining to prohibiting public transit drivers from using certain devices while operating motor vehicles, providing for codification, severability, and providing for an effective date. Exhibits: Ordinance No. 11-____.

MOVED by Haywood, SECOND by Shoemate to adopt **Ordinance 11-39**, waive the reading of the ordinance, read the title only and providing for an effective date. AYE: Zarle, Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Givens. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-39

An ordinance pertaining to public transit drivers creating Section 23-5-548, Article 23-5, Chapter 23, Lawton City Code, 2005, prohibiting public transit drivers from using certain devices while operating motor vehicles, providing for codification, severability, and providing for an effective date.

28. Consider a resolution approving the execution and delivery by the Lawton Economic Development Authority of a 2009 Economic Development Capital Improvement Reformed Note in the amount of not to exceed \$12,000,000 in aggregate amount outstanding at any one time for the purpose of establishing a later maturity date of December 5, 2011. Exhibits: Resolution No. 11-____ and Revised Note.

Bellino-Hall clarified that this resolution is just moving the maturity date of the loan into December. It does not change the rate.

Mitchell stated the resolution ratifies the action of LEDA in extending the loan.

Bellino-Hall questioned how often the interest comes due.

Mitchell stated it is payable monthly.

Bellino-Hall questioned if the \$600,000 that was approved is for the full year.

Mitchell stated that was for a full year.

Bellino-Hall questioned what happens in December if we don't meet the qualifications of the loan.

Mitchell stated we would have to discuss our options with the banks. The banks have indicated that the loan would be extended depending on what happens between now and December. They are anticipating having at least one closing.

Bellino-Hall stated that by December we should have some idea of where we are going with this loan.

Givens stated he made this motion with the understanding that there is going to be a TIF note executed by LEDA to the City that at some point in time will replace the \$600,000 from the economic development fund. He stated there will also be a special council meeting to meet with the attorneys that have been working for LEDA and with the banking group as well so the council can be better informed about what is happening with the 2nd Street project.

Jensen stated they do have a TIF note for up the \$600,000 prepared and it will be on the next LEDA agenda.

MOVED by Givens, SECOND by Haywood to adopt **Resolution 11-70**. AYE: Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Givens, Zarle. NAY: None. MOTION CARRIED

AUDIENCE PARTICIPATION:

Curt Francis, 2426 SW G Avenue, stated item #7 on the agenda tonight was voted down. He questioned if it is going to be the policy of the council to deny all revocable permits. He stated he did not get to the meeting in time to speak on this item. He stated the easement only includes PSO and Centerpointe. There are no city utilities in the easement. He met with both Centerpointe and PSO and they both signed off on it. He stated it is a 15 foot easement and they are leaving them 12 feet to get their trucks in and out. He stated city staff had recommended approval.

Haywood questioned why Mr. Francis did not contact his council person.

Mr. Francis stated he did not feel he had to since staff was recommending approval.

Wells stated the concern is with building something that future homeowners may not be aware is there. It is not fair for future homeowners and they cannot guarantee that future homeowners will know that revocable permit is in place.

Bellino-Hall stated the easements in her office complex have been completely demolished because the city is putting in new water lines and she accepts that. If she was a homeowner and someone came and tore up her patio that she assumed was on her property, she would be upset.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Haywood stated that he appreciated all of the city employees that are working out in the heat.

Givens stated the Howard Council exhibit will start on Sunday.

Mitchell stated there will be a project meeting on Thursday at St. Paul s Methodist Church to discuss the 38th Street project. Construction will begin on or about September 6th.

Ihler stated a couple of months ago the council approved a hazardous mitigation plan from a consulting engineer to perform that work and as part of that work there is an emergency management advisory committee. They are asking for a volunteer member from the city council to participate on this committee. They will meet about four or five times over a period of six months.

Tennis volunteered to participate.

There being no further business to consider, the meeting adjourned at 8:30 p.m. upon motion, second and roll call vote.

/s/ Fred L. Fitch
FRED L. FITCH, MAYOR
ATTEST:

/s/ Traci L. Hushbeck
TRACI HUSHBECK, CITY CLERK